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IN THE

# Supreme Court of the United States

OCTOBER TERM, A.D., 1977

**No. 76-1111**

**RONALD OWENS,**

*Petitioner,*

VS.

**PEOPLE OF THE STATE OF ILLINOIS,**

*Respondent.*

**BRIEF IN OPPOSITION TO PETITION FOR A  
WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF ILLINOIS**

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**REASONS FOR DENYING THE WRIT**

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**A.**

**THE STATE POST-CONVICTION PETITION WAS  
PROPERLY DISMISSED BECAUSE IT WAS INSUF-  
FICIENT AS A MATTER OF STATE LAW.**

An allegation of perjured testimony at trial is cognizable under the Illinois Post-Conviction Hearing Act, Ill. Rev. Stat., 1975, Ch. 38, Sec. 122-1 *et seq.* if not

conclusory and if supported by affidavit. *People v. Martin*, 46 Ill.2d 565, 264 N.E.2d 147 (1970); *People v. Smith*, 42 Ill. 2d 516, 251 N.E. 2d 721 (1969).

In defendant's petition defendant alleged that police fabricated the charge against him and forced Ransom Brown to testify falsely concerning defendant's whereabouts on the night of the murder of the deceased in order to preclude the defendant from testifying at the murder trial of police officer Louis Pote. Defendant contends that the "substantial factual basis" for this allegation is the statement given by Ransom Brown incorporated in defendant's post conviction petition.

A review of the petition discloses, however, that defendant's allegations concerning the motivation for the police forcing Ransom Brown to perjure himself are conclusory and based upon mere conjecture. There is nothing in the record or in defendant's post conviction petition from which one could reasonably infer that the police were attempting to preclude defendant from testifying at Louis Pote's murder trial.

In the present case, in order for the trial court to accept Brown's attempted recantation as true he would have to believe that the police officers told Ransom Brown exactly what to say (Brown never made that allegation) and he would also have to accept defendant's unsupported allegation of the police officers' motivation for forcing Brown to perjure himself.

Even assuming *arguendo* that the trial testimony of Brown was perjured defendant still was not denied a constitutional right to a fair trial because the allegedly perjured testimony was not necessary for defendant's conviction. In view of the positive, reliable identification of the defendant by Robert Butler who had more than an adequate opportunity to view his brother's assailant

any error in the admission of Brown's circumstantial testimony was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824 (1967). This fact alone distinguishes *Napue v. Illinois* 360 U.S. 264 (1959). See, *United States ex rel. Dale v. Williams*, 459 F.2d 763 (3rd Cir. 1972).

B.

**IDENTIFICATION PROCEDURES WERE NOT UN-DULY SUGGESTIVE AND THERE EXISTED AN IN-DEPENDENT BASIS FOR THE IN-COURT IDENTIFICATION.**

Robert Butler, brother of the deceased, testified that on the night of his brother's murder the police showed him some photographs, one of which was of the defendant. When he looked at the picture of the defendant he wasn't sure if defendant was the assailant because it was an earlier picture of the defendant so he told the police he would have to visually see his brother's assailant in order to identify him. (R. 50-51) Two days later the police called Robert and transported him to the police station to view a lineup. They told him that he was going to see a lineup and that the person he described as the defendant, Ronald Owens, would be in the lineup and that Robert would be able to tell if he still felt the same way about his identification. (R. 23)

Robert was told that the police were conducting a three man lineup and that he was to look into the room and see if he could identify anyone. (R. 53) Robert passed by the door and looked in. There were three men standing, practically all the same height and dressed similarly. Defendant also had curlers in his hair and was wearing tinted glasses. Robert identified the defendant then asked the police to have the defendant remove his glasses because Robert didn't want anyone to feel

that he had made up his mind without seeing the defendant without the glasses. Robert then pointed defendant out a second time as his brother's assailant. (R. 56-58) Although both the defendant and his brother, Alfred, testified that Robert initially identified defendant's other brother, Gregory, Robert denied ever identifying anyone other than the defendant. (R. 55, 125, 211)

The record shows that the defendant was viewed, along with his two brothers who were dressed very similarly to the defendant and who were both about the defendant's height, in a lineup conducted just 2 days after the offense when the witness' recollection of the events was greatest and where his memory as to the identity of the assailant was fresh. This was at a time when the danger of susceptibility to suggestion should have been at its lowest level. Indeed, when the witness observed the defendant, defendant was wearing tinted glasses and had rollers in his hair, yet, the witness was still able to identify the defendant and his identification was certain and unequivocal.

It should also be pointed out that even though Robert Butler was told that "the man [he] described as Ronald Owens would be there—," this action on the part of the police was not unnecessarily suggestive. It is evident to any person who comes to view a lineup that the police think they have the offender in custody. Furthermore, Robert had already told the police he would have to see the defendant visually to determine if he was his brother's assailant.

Even assuming that the lineup was unduly suggestive there was an independent basis for the in-court identification of the defendant. *Stoval v. Denno*, 388 U.S. 293 (1967).

The record discloses that Robert Butler first saw the defendant coming down the street toward him with a group of other youths and that Robert particularly noticed the defendant because the defendant was the tallest in the group. (R. 15, 36-37). The scene of the murder was depicted by Robert thusly: they were all near the corner of 67th and Ashland, a busy street with many lights and two way traffic; additionally, there was a great deal of lighting coming from the grocery store adjacent to the well-lit drug store on the corner where the shooting took place. (R. 23-24). The closest Robert got to the defendant was 4 feet and he was looking at the defendant's face at that time. (R. 24). When they reached the corner the deceased was standing between Robert and the defendant, when the defendant, lunging at the deceased, told the deceased to "get [his] ass going". As the deceased turned toward the defendant the defendant struck him in the face and then said, "[Shoot] him. [S]hoot him. [S]hoot that nigger." (R. 18-20, 44, 46). The boy with the gun shot the deceased and everyone ran. (R. 20-21). Considering all these circumstances together, particularly the lighting conditions and the opportunity the witness had to observe the defendant, the close and frightening contact with the defendant that the witness experienced and the unequivocal identification of the defendant at trial, there is not room for doubt that the identification of the defendant had as its origin the time of the offense uninfluenced by the lineup confrontation so that there is no merit to defendant's contention that he was denied due process of law. Therefore, the error, if any, in the admission of testimony concerning defendant's lineup identification was harmless beyond a reasonable doubt and could not have affected the jury's verdict. *Chapman v. California*, 386 U.S. 18 (1967).

## CONCLUSION

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For the reasons stated above, it is respectfully submitted that the Petition For A Writ Of Certiorari be denied.

Respectfully submitted,

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